

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARKE and REBECCA WIXON and
NORMAN and BARBARA WIXON, on
behalf of themselves and all others
similarly situated,

Plaintiff,

v.

TRENDWEST RESORTS, INC. (a/k/a
Worldmark by Wyndham), and DOES 1-
50,

Defendants.

Case No.: C 07-02361 JSW

STIPULATED PROTECTIVE ORDER

1. PURPOSE AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

1 **2. DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner generated, stored, or maintained (including, among other
6 things, testimony, transcripts, or tangible things) that are produced or generated in
7 disclosures or responses to discovery in this matter.

8 2.3 "Confidential" Information or Items: information (regardless of how
9 generated, stored or maintained) or tangible things that qualify for protection under
10 standards developed under F.R.Civ.P. 26(c).

11 2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items:
12 extremely sensitive "Confidential Information or Items" whose disclosure to another Party
13 or non-party would create a substantial risk of serious injury that could not be avoided by
14 less restrictive means.

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or
18 Discovery Material in this action.

19 2.7 Designating Party: a Party or non-party that designates information
20 or items that it produces in disclosures or in responses to discovery as "Confidential" or
21 "Highly Confidential - Attorneys' Eyes Only."

22 2.8 Protected Material: any Disclosure or Discovery Material that is
23 designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only."

24 2.9 Outside Counsel: attorneys who are not employees of a Party but
25 who are retained to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
28

1 well as their support staffs).

2 2.12 Expert: a person with specialized knowledge or experience in a
3 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
4 as an expert witness or as a consultant in this action and who is not a past or current
5 employee of a Party or of a competitor of a Party's and who, at the time of retention, is
6 not anticipated to become an employee of a Party or a competitor of a Party's. This
7 definition includes a professional jury or trial consultant retained in connection with this
8 litigation.

9 2.13 Professional Vendors: persons or entities that provide litigation
10 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
11 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
12 their employees and subcontractors.

13
14 **3. SCOPE**

15 The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also any information copied or extracted therefrom, as
17 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
18 conversations, or presentations by parties or counsel to or in court or in other settings
19 that might reveal Protected Material.

20
21 **4. DURATION**

22 Even after the termination of this litigation, the confidentiality obligations imposed
23 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
24 or a court order otherwise directs.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for**

3 Protection. Each Party or non-party that designates information or items for protection
4 under this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. A Designating Party must take care to
6 designate for protection only those parts of material, documents, items, or
7 communications that qualify – so that other portions of the material, documents, items, or
8 communications for which protection is not warranted are not swept unjustifiably within
9 the ambit of this Order.
10

11 Mass, indiscriminate, or routinized designations are prohibited.

12 Designations that are shown to be clearly unjustified, or that have been made for an
13 improper purpose (e.g., to unnecessarily encumber or retard the case development
14 process, or to impose unnecessary expenses and burdens on other parties), expose the
15 Designating Party to sanctions.
16

17 If it comes to a Party's or a non-party's attention that information or items
18 that it designated for protection do not qualify for protection at all, that Party or non-party
19 must promptly notify all other parties that it is withdrawing the mistaken designation.
20

21 **5.2 Manner and Timing of Designations**. Except as otherwise provided

22 in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
23 stipulated or ordered, material that qualifies for protection under this Order must be
24 clearly so designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the
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1 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at
2 the top of each page that contains protected material. If only a portion or portions of the
3 material on a page qualifies for protection, the Producing Party also must clearly identify
4 the protected portion(s) (e.g., by making appropriate markings in the margins) and must
5 specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL"
6 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").
7

8 A Party or non-party that makes original documents or materials
9 available for inspection need not designate them for protection until after the inspecting
10 Party has indicated which material it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for inspection
12 shall be deemed "Highly Confidential - Attorneys' Eyes Only." After the inspecting Party
13 has identified the documents it wants copied and produced, the Producing Party must
14 determine which document, or portions thereof, qualify for protection under this Order,
15 then, before producing the specified documents, the Producing Party must affix the
16 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
17 EYES ONLY") at the top of each page that contains Protected Material. If only a portion
18 or portions of the material on a page qualifies for protection, the Producing Party also
19 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
20 margins) and must specify, for each portion, the level of protection being asserted (either
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").
22
23

24 (b) for testimony given in deposition or in other pretrial or trial
25 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
26 the record, before the close of the deposition, hearing, or other proceeding, all protected
27 testimony, and further specify any portions of the testimony that qualify as "HIGHLY
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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY." When it is impractical to identify
2 separately each portion of testimony that is entitled to protection, and when it appears
3 that substantial portions of the testimony may qualify for protection, the Party or non-
4 party that sponsors, offers or gives the testimony may invoke on the record (before the
5 deposition or proceeding is concluded) a right to have up to 20 days to identify the
6 specific portions of the testimony as to which protection is sought and to specify the level
7 of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
8 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are designated
9 for protection within the 20 days shall be covered by the provisions of this Stipulated
10 Protective Order.
11

12
13 Transcript pages containing Protected Material must be separately bound
14 by the court reporter, who must affix to the top of each such page the legend
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as
16 instructed by the Party or non-party offering or sponsoring the witness or presenting the
17 testimony.
18

19 (c) for information produced in some form other than
20 documentary, and for any other tangible items, that the Producing Party affix in a
21 prominent place on the exterior of the container or containers in which the information or
22 item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
23 ATTORNEYS' EYES ONLY." If only portions of the information or item warrant
24 protection, the Producing Party, to the extent practicable, shall identify the protected
25 portions, specifying whether they qualify as "Confidential" or "HIGHLY CONFIDENTIAL -
26 ATTORNEYS' EYES ONLY."
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an
2 inadvertent failure to designate information or items as "Confidential" or "Highly
3 Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating
4 Party's right to secure protection under this Order for such material. If material is
5 designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" after the
6 material was initially produced, the Receiving Party, on timely notification of the
7 designation, must make reasonable efforts to assure that the material is treated in
8 accordance with the provisions of this Order.
9

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
12 Party's confidentiality designation is necessary to avoid foreseeable substantial
13 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
14 the litigation, a Party does not waive its right to challenge a confidentiality designation by
15 electing not to mount a challenge promptly after the original designation is disclosed.
16

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
18 Designating Party's confidentiality designation must do so in good faith and must begin
19 the process by conferring directly (in voice to voice dialogue; other forms of
20 communication are not sufficient) with counsel for the Designating Party. In conferring,
21 the challenging Party must explain the basis for its belief that the confidentiality
22 designation was not proper and must give the Designating Party an opportunity to review
23 the designated material, to reconsider the circumstances, and, if no change in
24 designation is offered, to explain the basis for the chosen designation. A challenging
25 Party may proceed to the next stage of the challenge process only if it has engaged in
26 this meet and confer process first.
27
28

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 2 confidentiality designation after considering the justification offered by the Designating
 3 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
 4 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
 5 detail the basis for the challenge. Each such motion must be accompanied by a
 6 competent declaration that affirms that the movant has complied with the meet and
 7 confer requirements imposed in the preceding paragraph and that sets forth with
 8 specificity the justification for the confidentiality designation that was given by the
 9 Designating Party in the meet and confer dialogue.

10 The burden of persuasion in any such challenge proceeding shall be on
 11 the Designating Party. Until the court rules on the challenge, all parties shall continue to
 12 afford the material in question the level of protection to which it is entitled under the
 13 Producing Party's designation.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that
 16 is disclosed or produced by another Party or by a non-party in connection with this case
 17 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 18 Material may be disclosed only to the categories of persons and under the conditions
 19 described in this Order. When the litigation has been terminated, a Receiving Party
 20 must comply with the provisions of section 11, below (FINAL DISPOSITION).
 21

22 Protected Material must be stored and maintained by a Receiving Party at
 23 a location and in a secure manner that ensures that access is limited to the persons
 24 authorized under this Order.
 25

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 27 otherwise ordered by the court or permitted in writing by the Designating Party, a
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Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

(c) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information and any recipients of the document as shown on the face of the document.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in

1 writing by the Designating Party, a Receiving Party may disclose any information or item
2 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

3 (a) the Receiving Party's Outside Counsel of record in this
4 action, as well as employees of said Counsel to whom it is reasonably necessary to
5 disclose the information for this litigation;
6

7 (b) House Counsel of a Receiving Party to whom disclosure is
8 reasonably necessary for this litigation;

9 (c) Experts (as defined in this Order) (1) to whom disclosure is
10 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be
11 Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in
12 paragraph 7.4, below, have been followed;

13 (d) the Court and its personnel;

14 (e) court reporters, their staffs, and professional vendors to
15 whom disclosure is reasonably necessary for this litigation and who have signed the
16 "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom
18 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound
19 by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
20 depositions that reveal Protected Material must be separately bound by the court
21 reporter and may not be disclosed to anyone except as permitted under this Stipulated
22 Protective Order.

23 (g) the author of the document or the original source of the
24 information.
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1 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
2 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

3 (a) Unless otherwise ordered by the court or agreed in writing by
4 the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this
5 Order) any information or item that has been designated "HIGHLY CONFIDENTIAL –
6 ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party
7 that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving
8 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the
9 Expert and the city and state of his or her primary residence, (3) attaches a copy of the
10 Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies
11 each person or entity from whom the Expert has received compensation for work in his
12 or her areas of expertise or to whom the expert has provided professional services at
13 any time during the preceding five years, and (6) identifies (by name and number of the
14 case, filing date, and location of court) any litigation in connection with which the Expert
15 has provided any professional services during the preceding five years.

16 (b) A Party that makes a request and provides the information
17 specified in the preceding paragraph may disclose the subject Protected Material to the
18 identified Expert unless, within seven court days of delivering the request, the Party
19 receives a written objection from the Designating Party. Any such objection must set
20 forth in detail the grounds on which it is based.

21 (c) A Party that receives a timely written objection must meet
22 and confer with the Designating Party (through direct voice to voice dialogue) to try to
23 resolve the matter by agreement. If no agreement is reached, the Party seeking to make
24 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
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1 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
2 do so. Any such motion must describe the circumstances with specificity, set forth in
3 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess
4 the risk of harm that the disclosure would entail and suggest any additional means that
5 might be used to reduce that risk. In addition, any such motion must be accompanied by
6 a competent declaration in which the movant describes the parties' efforts to resolve the
7 matter by agreement (i.e., the extent and the content of the meet and confer
8 discussions) and sets forth the reasons advanced by the Designating Party for its refusal
9 to approve the disclosure.
10

11 In any such proceeding the Party opposing disclosure to the Expert
12 shall bear the burden of proving that the risk of harm that the disclosure would entail
13 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
14 Protected Material to its Expert.
15

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 If a Receiving Party is served with a subpoena or an order issued in other
19 litigation that would compel disclosure of any information or items designated in this
20 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if
22 possible) immediately and in no event more than three court days after receiving the
23 subpoena or order. Such notification must include a copy of the subpoena or court
24 order.
25

26 The Receiving Party also must immediately inform in writing the Party who
27 caused the subpoena or order to issue in the other litigation that some or all of the
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1 material covered by the subpoena or order is the subject of a Protective Order. In
2 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
3 promptly to the Party in the other action that caused the subpoena or order to issue.
4

5 The purpose of imposing these duties is to alert the interested parties to the
6 existence of this Protective Order and to afford the Designating Party in this case an
7 opportunity to try to protect its confidentiality interests in the court from which the
8 subpoena or order issued. The Designating Party shall bear the burdens and the
9 expenses of seeking protection in that court of its confidential material – and nothing in
10 these provisions should be construed as authorizing or encouraging a Receiving Party in
11 this action to disobey a lawful directive from another court.
12

13 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, that Receiving Party must immediately (a) notify in writing
17 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
18 all copies of the Protected Material, (c) inform the person or persons to whom
19 unauthorized disclosures were made of all terms of this Order, and (d) request such
20 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
21 attached hereto as Exhibit A.
22

23 **10. FILING PROTECTED MATERIAL.** Without written permission from the
24 Designating Party or a court order secured after appropriate notice to all interested
25 persons, a Party may not file in the public record in this action any Protected Material. A
26 Party that seeks to file under seal any Protected Material must comply with Civil Local
27 Rule 79-5.
28

1 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by
2 the Producing Party, within sixty days after the final termination of this action (including
3 appellate review), each Receiving Party must return all Protected Material to the
4 Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
5 abstracts, compilations, summaries or any other form of reproducing or capturing any of
6 the Protected Material. With permission in writing from the Designating Party, the
7 Receiving Party may destroy some or all of the Protected Material instead of returning it.
8 Whether the Protected Materials is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or
10 entity, to the Designating Party) by the sixty day deadline that identifies (by category,
11 where appropriate) all the Protected Material that was returned or destroyed and that
12 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries or other forms of reproducing or capturing any of the Protected Material.
14 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
15 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
16 work product, even if such materials contain Protected Material. Any such archival
17 copies that contain or constitute Protected Material remain subject to this Protective
18 Order as set forth in Section 4 (DURATION), above.

21
22 **12. MISCELLANEOUS**

23 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
24 any person to seek its modification by the court in the future.

25 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to disclosing
27 or producing any information or item on any ground not addressed in this Stipulated
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1 Protective Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED: October 15, 2007


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15 DATED: October 15, 2007


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29 PURSUANT TO STIPULATION, IT IS SO ORDERED.

30 DATED: October 15, 2007


Hon. Jeffrey S. White
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of *Clark and
Rebecca Wixon, et al. v. Trendwest Resorts, Inc., et al.*, Case No. C 07-02361 JSW. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of
this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

I hereby appoint _____ [print or type full name] of _____
[print or type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

1
2 Date: _____

3
4 City and State where sworn and signed: _____

5 Printed name: _____
6 [printed name]

7
8 Signature: _____
9 [signature]